

House of Representatives, March 26, 1998. The Committee on Government Administration and Elections reported through REP. BYSIEWICZ, 100th DIST., Chairman of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT REQUIRING NOTICE TO EMPLOYEES OF ELECTRONIC MONITORING BY EMPLOYERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 (NEW) (a) As used in this section:

2 (1) "Employer" means any person, firm or
3 corporation, including the state and any political
4 subdivision of the state which has employees;

5 (2) "Employee" means any person who performs
6 services for an employer in a business of the
7 employer, if the employer has the right to control
8 and direct the person as to (A) the result to be
9 accomplished by the services and (B) the details
10 and means by which such result is accomplished;
11 and

12 (3) "Electronic monitoring" means the
13 collection of information concerning employees'
14 activities or communications by any means other
15 than direct observation, including the use of a
16 computer, telephone, wire, radio, camera,
17 electromagnetic, photoelectronic or photo-optical
18 systems.

19 (b) (1) Each employer who engages in any type
20 of electronic monitoring shall give prior written
21 notice to all employees who may be affected,

22 informing them of the types of monitoring which
23 may occur.

24 (2) When (A) an employer has reasonable
25 grounds to believe that employees are engaged in
26 conduct which violates either (i) the law or (ii)
27 the legal rights of the employer or the employer's
28 employees, and (B) electronic monitoring will
29 produce evidence of this misconduct, the employer
30 may conduct monitoring without giving prior
31 written notice.

32 (c) An employer which engages in random or
33 periodic electronic monitoring, including
34 telephone service observation, shall notify the
35 affected employees of the specific events which
36 are being monitored at the time the monitoring
37 takes place. An employer which engages in a bona
38 fide quality control program may give prior,
39 general notice to affected employees of the
40 existence and parameters of such random or
41 periodic electronic monitoring, in lieu of such
42 simultaneous notice. As used in this section "bona
43 fide quality control program" means an employer
44 program which meets the following requirements:

45 (1) The information collected relates to the
46 performance of a specific job function;

47 (2) The employer has a written standard for
48 the performance of the job function;

49 (3) The purpose of the program is to compare
50 the performance of employees performing the
51 function to the standard;

52 (4) The information is collected on a
53 reasonably equal basis regarding the performance
54 of all employees performing the function; and

55 (5) The affected employees are given feedback
56 on the employer's evaluation of their performance
57 at a time when they can reasonably be expected to
58 remember the events upon which their evaluation is
59 based.

60 (d) Any employer who violates any provision
61 of subsection (b) or (c) of this section shall,
62 for the first offense, be fined five hundred
63 dollars, for the second offense be fined one
64 thousand dollars, and for the third and any
65 subsequent offense be imprisoned thirty days.

66 (e) The provisions of this section shall not
67 apply to a criminal investigation. Any information
68 obtained in the course of a criminal investigation
69 through the use of electronic monitoring may be

70 used in a disciplinary proceeding against an
71 employee.

72 GAE COMMITTEE VOTE: YEA 11 NAY 6 JFS

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"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

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FISCAL IMPACT STATEMENT - BILL NUMBER SHB 5398

STATE IMPACT	Potential Minimal Cost, Can Be Absorbed, Potential Minimal Revenue Gain, see explanation below
MUNICIPAL IMPACT	Potential Minimal Cost, Can Be Absorbed, see explanation below
STATE AGENCY(S)	Various Criminal Justice Agencies, Various State Agencies

EXPLANATION OF ESTIMATES:

STATE AND MUNICIPAL IMPACT: Due to the requirement of notifying employees of electronic monitoring in writing, the passage of this bill could result in minimal additional costs to the State and municipalities as employers, which would be absorbed within existing resources.

It is anticipated that the amount of cases that would stem from the passage of this bill would be minimal and therefore absorbable within the criminal justice agencies' current budgetary and caseload structure. The potential revenue gain resulting from fines is also anticipated to be minimal.

This conclusion is based partly upon a May 1997 report by a watchdog group, which stated that about 1/3 of companies in the U.S. monitor their employees by taping telephone calls, intercepting computer files and electronic mail, and videotaping employees at their job. This report also stated that most companies informed employees of their monitoring policies. Accordingly, the potential number of cases arising from

noncompliance with the pre-notification requirement has been anticipated to be minimal.

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OLR BILL ANALYSIS

SHB 5398

AN ACT REQUIRING NOTICE TO EMPLOYEES OF ELECTRONIC MONITORING BY EMPLOYERS

SUMMARY: This bill requires most employers who engage in electronic monitoring to give their affected employees prior written notice of the type of monitoring that may occur. Employers who engage in random or periodic monitoring may give simultaneous rather than prior notice. And employers with reasonable grounds to believe their employees are violating the law or the rights of the employer or other employees may monitor without prior notice. The bill does not apply to criminal investigations and allows any information obtained in such investigations through the use of electronic monitoring to be used in disciplinary actions against employees.

Employers who violate the bill's provisions are subject to a \$500 fine for a first offense, \$1,000 for a second, and 30 days imprisonment for subsequent offenses.

EFFECTIVE DATE: October 1, 1998

FURTHER EXPLANATION

Random or Periodic Electronic Monitoring

The bill requires employers who engage in random or periodic electronic monitoring to give affected employees notice of the specific events being monitored when it takes place. But it authorizes employers engaged in a bona fide quality control program to give employees prior, general notice of the existence and parameters of random or periodic monitoring, rather than simultaneous notice. A "bona fide quality control program" is one where employers (1) collect information concerning all employees on a reasonably equal basis to

compare their job performance to the employer's written job performance standards and (2) give employees feedback on their performance in an evaluation completed when they can reasonably be expected to remember the events upon which the evaluation was based.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 11 Nay 6